Perusahaan Petanda Bintang Sdn Bhd v Asbir, Hira Singh & Co

HIGH COURT (PENANG) — ORIGINATING PETITION NO 26-5-91
VINCENT NG J
7 APRIL 1995

Legal Profession *— Remuneration — Costs — Costs paid even though no bill of costs delivered — Whether petition for delivery of bill of costs and taxation thereof may be made — Effect of costs being paid through solicitors — Whether payment made under pressure*

Civil Procedure *— Jurisdiction — Inherent jurisdiction of court — Order for delivery of bill of costs and taxation thereof — Whether Legal Profession Act 1976 had displaced court's inherent jurisdiction*

Civil Procedure *— Affidavits — In support of petition — Whether petition of costs must be supported by affidavit*

Legal Profession *— Remuneration — Bill of costs — Petition for order for delivery of bill of costs and taxation thereof — Whether borrower may seek such order against bank's solicitor — Legal Profession Act 1976 ss 126 & 130*

The petitioner had entered into a loan agreement with a bank ('the bank') for which certain shares ('the shares') were deposited with the bank as security. The bank later demanded payment of the balance of the loan and for this purpose the bank had employed the respondent. Pursuant to cl 23 of the loan agreement which provided that the petititoner was bound to pay the costs of the bank's solicitors, the respondent informed the petitioner that it had to pay their costs of RM40,000 in addition to the balance of the loan before the shares could be released. As the shares were needed as security by the re-financiers, the petitioner had no choice but to pay the costs demanded by the respondent which they did on 1 July 1991. The petitioner then applied to the respondent for the delivery of a bill of costs in respect of the work done and for taxation thereof but the respondent did not respond. Dissatisfied with the quantum of fees demanded, which the petitioner considered to be manifestly excessive and unconscionable, the petitioner filed a petition of costs under s 130(1) of the Legal Profession Act 1976 ('the Act') on 27 July 1991 and prayed that the respondent deliver to it a bill of costs for the work done as solicitors of the bank, that the said bill might be referred to the senior assistant registrar to be taxed and that the respondent refund to the petitioner any overpayment found to be due to the petitioner. The respondent objected to the application, contending that: (a) the Act had displaced the court's inherent jurisdiction to make orders for the taxation of a bill of costs where the relevant application was made more than 12 months after the payment of the bill; (b) there was no affidavit filed in support of the petition; (c) ss 126 and 130 of the Act were

inapplicable to enable a borrower to seek an order against the bank's solicitors for the delivery of a bill of costs and have it referred for taxation; (d) the costs had been paid and there was failure to make protest at the time of payment; and (e) the costs was voluntarily paid through solicitors.

Held, allowing the application:

(1) Ground (a) raised by the respondent was baseless as the petition was filed well within the period of six months stipulated in s 126 of the Act despite the non-delivery of the bill of costs. Even in petitions made outside the stipulated period, by virtue of their role as watch-dog over the conduct of solicitors, the courts in Malaysia were not precluded from invoking their inherent jurisdiction in appropriate cases where the facts pleaded disclosed a serious misconduct of gross overcharging or fraud on services rendered by an advocate and solicitor.

(2) There was no requirement in O 9 of the Rules of the High Court 1980 that the petition must be supported by an affidavit. Proceedings begun by way of a petition were similar to proceedings begun by writ. Thus as there were no requirements for writs or summonses to be supported by affidavits, petitions generally also need not be supported by affidavits.

(3) Having regard to ss 126(1), 130(1) and (3) of the Act and relevant case authorities, the court would have not only statutory but also inherent and general powers of supervision over the fee that solicitors charge in non-contentious matters as well as in contentious matters as provided under ss 116 and 118 of the Act. Thus the petitioner was entitled to have delivery of the bill of costs and taxation thereof. In any event, a mortgagor was entitled to have taxation of the bill of costs of solicitors acting for the mortgagee.

(4) For the purposes of the Act, only payment of a sufficient bill of costs previously delivered could constitute payment but not when payment was made without such a bill. If a sufficient bill had been delivered, a party liable to pay might still petition for an order of taxation even after the bill had been paid, if special circumstances could be shown. Thus ground (d) of the respondent's objection could not be sustained.

(5) The question whether there was pressure on a party liable to pay costs must be decided on the circumstances of each particular case. A petitioner for an order for delivery of a bill of costs and taxation of it would only be required to show to the court's satisfaction that he was acting under pressure when he paid the amount, and the fact that he was at the material time represented by a solicitor was inconsequential.

(6) On the facts of the case, the fee of RM40,000 charged by the respondent was, prima facie, grossly excessive and highly

unconscionable. It was clear from the correspondence passing between the respondent and the petitioner that the petitioner was under unbearable pressure to pay whatever sum demanded by the respondent due to the escalating daily interest payable to the bank while the shares, which were needed by the petitioner to be given as security to the refinanciers, were held by the respondent. While in normal circumstances the court should be averse to interfere in matters concerning costs paid by a party through his solicitor, in this case the court would be failing in its duty if, on the mere ground that the petitioner had paid through its solicitor, it should refuse to intervene to ensure that the rights of the petitioner as a consumer of legal services were protected.

Per curiam:

(1) The basis of a lawyer's remuneration for services rendered is his charges for actual work done; his costs can never be grounded on the high value of security held by, or the amount of money owed by the party chargeable to, his clients.

(2) The jurisdiction to order a bill of costs to be delivered is distinct from the jurisdiction to order the bill to be taxed, and delivery may be ordered even though afterwards taxation may not be ordered.

[Bahasa Malaysia summary

Pempetisyen telah mengikat satu perjanjian pinjaman dengan sebuah bank ('bank itu') untuk mana saham-saham tertentu ('saham-saham itu') telah disampaikan kepada bank itu sebagai cagaran. Bank itu kemudiannya menuntut bayaran baki pinjaman itu dan untuk tujuan ini, bank itu telah mengambil khidmat responden. Mengikut fasal 23 perjanjian pinjaman itu yang memperuntukkan bahawa pempetisyen bertanggungan membayar kos peguamcara bank, responden telah memberitahu pempetisyen bahawa ianya mesti membayar kos sebanyak RM40,000 sebagai tambahan kepada baki pinjaman yang mesti dijelaskan sebelum saham-saham itu boleh dilepaskan. Oleh kerana saham-saham itu diperlukan sebagai cagaran oleh pemberi pinjaman yang baru, pempetisyen tidak ada pilihan tetapi membayar kos yang diminta oleh responden yang dilakukannya pada 1 Julai 1991. Pempetisyen kemudiannya memohon kepada responden untuk penyampaian satu bil kos berkenaan dengan kerja yang telah dilakukan dan untuk pentaksiran bil tersebut tetapi responden tidak memberi jawapan. Tidak berpuas hati dengan jumlah fee yang diminta, yang dianggap oleh pempetisyen sebagai keterlaluan dan tidak berpatutan, pempetisyen telah memfailkan satu petisyen kos di bawah s 130(1) Akta Profesyen Undang-Undang 1976 ('Akta itu') pada 27 Julai 1991 dan memohon supaya responden menyampaikan kepadanya satu bil kos untuk kerja yang dilakukan sebagai peguamcara bank, supaya bil tersebut dirujuk kepada penolong kanan pendaftar untuk

ditaksirkan dan supaya responden membayar balik kepada pempetisyen bayaran lebihan yang didapati kena dibayar kepada pempetisyen. Responden telah membantah kepada permohonan itu dan berhujah bahawa: (a) Akta itu telah mengetepikan bidang kuasa sedia ada mahkamah untuk membuat perintah untuk pentaksiran bil kos di mana permohonan yang relevan dibuat lebih daripada 12 bulan selepas bayaran bil itu dibuat; (b) tidak terdapat afidavit yang difailkan untuk menyokong petisyen itu; (c) ss 126 dan 130 Akta itu tidak terpakai untuk membolehkan seorang peminjam meminta suatu perintah terhadap peguamcara bank untuk penyampaian satu bil kos dan merujuknya untuk pentaksiran; (d) kos itu telah dibayar dan terdapat kegagalan membuat bantahan pada masa bayaran dibuat; dan (e) kos itu telah dibayar dengan sukarela menerusi peguamcara.

Diputuskan, membenarkan permohonan itu:

(1) Alasan (a) yang diutarakan oleh responden tidak berasas kerana petisyen itu telah difailkan di dalam tempoh masa enam bulan yang diperuntukkan di dalam s 126 Akta itu walaupun bil kos tidak disampaikan. Biarpun di dalam petisyen yang dibuat di luar tempoh masa yang diperuntukkan, memandangkan fungsi mahkamah sebagai penjaga kelakuan peguam-peguam, mahkamah di Malaysia tidak disekat daripada menggunakan bidang kuasa sedia ada mereka di dalam kes-kes yang sesuai di mana fakta-fakta yang dinyatakan di dalam pli menunjukkan salah laku yang teruk dalam bentuk pengenaan caj berlebihan atau penipuan di dalam perkhidmatan yang diberikan oleh seorang peguambela dan peguamcara.

(2) Tidak terdapat keperluan di dalam A 9 Kaedah-Kaedah Mahkamah Tinggi 1980 bahawa sesuatu petisyen mesti disokong oleh satu afidavit. Prosiding yang dimulakan menerusi satu petisyen adalah serupa dengan prosiding yang dimulakan dengan writ. Oleh itu memandangkan bahawa tidak ada keperluan untuk writ atau saman disokong oleh afidavit, petisyen secara amnya juga tidak perlu disokong oleh afidavit.

(3) Mempertimbangkan ss 126(1), 130(1) dan (3) Akta itu dan autoriti kes yang relevan, mahkamah mempunyai bukan sahaja kuasa penyeliaan statutori tetapi juga kuasa penyeliaan sedia ada dan am ke atas fee yang dikenakan oleh peguam di dalam perkara bertikaian serta di dalam perkara tak bertikaian seperti yang diperuntukkan di bawah ss 116 dan 118 Akta itu. Oleh itu pempetisyen berhak mendapat penyampaian bil kos dan pentaksiran bil itu. Apa sekalipun, seorang pemberi gadaian berhak mendapat pentaksiran bil kos peguamcara yang bertindak untuk pemegang gadaian.

(4) Bagi tujuan Akta itu, cuma bayaran untuk satu bil kos yang mencukupi yang terlebih dahulu telah disampaikan boleh membentuk bayaran tetapi bukan apabila bayaran dibuat tanpa

bil sedemikian. Jika satu bil yang mencukupi telah disampaikan, pihak yang bertanggungan untuk membayar masih boleh mempetisyen untuk satu perintah pentaksiran biarpun selepas bil itu telah pun dibayar, jika keadaan-keadaan khas boleh ditunjukkan. Lantaran itu alasan (d) dalam bantahan responden tidak boleh diterima.

(5) Soalan sama ada terdapat tekanan ke atas sesuatu pihak yang bertanggungan membayar kos mesti diputuskan atas keadaan-keadaan setiap kes yang tertentu. Seorang pempetisyen untuk perintah bagi penyampaian bil kos dan pentaksiran bil itu cuma akan diperlukan memuaskan mahkamah bahawa beliau telah bertindak di bawah tekanan apabila beliau membayar jumlah itu, dan hakikat bahawa beliau pada masa yang penting diwakili oleh seorang peguamcara tidak membawa apa-apa kesan.

(6) Atas fakta kes ini, fee RM40,000 yang dikenakan oleh responden adalah, prima facie, sangat keterlaluan dan tidak berpatutan. Adalah jelas daripada surat-surat yang berpindah tangan di antara responden dan pempetisyen bahawa pempetisyen berada di bawah tekanan yang tidak boleh ditahan untuk membayar apa-apa jumlah yang dituntut oleh responden akibat faedah harian yang kian meningkat yang patut dibayar kepada bank itu sementara saham-saham itu, yang diperlukan oleh pempetisyen untuk diberikan sebagai cagaran kepada pemberi pinjaman baru, dipegang oleh responden. Sedangkan di bawah keadaan biasa mahkamah seharusnya tidak gemar bercampur tangan di dalam perkara berkenaan dengan kos yang dibayar oleh sesuatu pihak menerusi peguamcaranya, di dalam kes ini mahkamah akan gagal menjalankan tugasnya jika, atas alasan semata-mata bahawa pempetisyen telah membayar menerusi peguamcaranya, ianya enggan bercampur tangan untuk memastikan bahawa hak pempetisyen sebagai seorang pengguna perkhidmatan guaman dipertahankan.

Per curiam:

(1) Dasar untuk bayaran yang dibuat kepada seorang peguam untuk khidmat yang diberikannya ialah cajnya untuk kerja yang sebenarnya dijalankan; kosnya tidak boleh dikira berdasarkan nilai tinggi gadaian yang dipegang atau jumlah wang yang dihutang oleh pihak yang bertanggungan membuat bayaran kepada kliennya.

(2) Bidang kuasa untuk memerintahkan penyampaian satu bil kos adalah berlainan daripada bidang kuasa untuk memerintahkan supaya bil itu ditaksirkan, dan penyampaian boleh diperintahkan walaupun kemudiannya pentaksiran mungkin tidak diperintahkan.]

[*Editorial Note*: The respondent has appealed to the Federal Court vide Civil Appeal No 02–2–95.]

Notes

For cases on affidavits, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 176–204.

For cases on the court's inherent jurisdiction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2187–2190.

For cases on remuneration of lawyers, see 9 *Mallal's Digest* (4th Ed) paras 1501–1505; [1989] Mallal's Digest 989, 1004, 1006; [1991] Mallal's Digest 1486–1488; [1992] Mallal's Digest 1323–1330.

Cases referred to

Boycott, Re (1885) 29 Ch D 571 (refd)
Dawson & Bryan, Re (1860) 28 Beav 605 (refd)
Duffett v McEvoy (1885) 10 App Cas 300 (refd)
Foster, Re [1920] 3 KB 306 (refd)
Harding, Re (1847) 10 Beav 250 (refd)
Harrison & Ors v Tew [1989] QB 307; [1987] 3 All ER 865; [1988] 2 WLR 1, CA; [1990] 2 AC 523; [1990] 1 All ER 321; [1990] 2 WLR 210, HL (distd)
Kintyre Park Development Pte Ltd v Cooma Lau & Loh [1991] 1 MLJ 85 (refd)
Longbotham & Sons, Re [1904] 2 Ch 152; [1904–7] All ER Rep 488 (refd)
Massey, Re (1909) 101 LT 517 (refd)
Taxation of Costs, Re; Re A Solicitor [1947] 1 All ER 369 (refd)
West, King & Adams, ex p Clough, Re [1892] 2 QB 102 (refd)

Legislation referred to

Legal Profession Act 1976 ss 116, 118, 126, 130, 131, Pts IV, IX
Rules of the High Court 1980 O 9
Solicitors Act 1974 s 70(4) [UK]

RR Sethu (*R Rajasingam* with him) (*Rajasingam & Co*) for the petitioner.
Hira Singh (*Asbir, Hira Singh & Co*) for the respondent.

Vincent Ng J: The petitioner herein had by this originating petition dated 27 July 1991 (encl 1) under s 130 of the Legal Profession Act 1976 ('the Act') filed a petition of costs and prayed that the legal firm of Messrs Asbir, Hira Singh & Co be ordered to, inter alia:

(a) deliver to the petitioner within 14 days after the order made, a bill of costs for the said work in which they had been employed as solicitors by the bank and that the said bill may be referred to the senior assistant registrar to be taxed and settled with all the usual directions; and

(b) refund to the petitioner any overpayment found to be due to the petitioner upon such taxation together with interest of 8%pa from 1 July 1991 to the date of repayment thereof.

A The statement of facts and grounds in the petition of costs reads as follows:

(1) The petitioner had entered into a loan agreement ('the loan agreement') dated 19 September 1988 with United Malayan Banking Corp Bhd ('the bank') together with a memorandum of deposit for
B 4,150,000 stock units of RM1 each in the capital of Benta Plantations Bhd ('the shares').

(2) By letter dated 25 March 1991, the bank demanded payment of the balance of the loan and for this purpose the bank had employed Asbir, Hira Singh & Co as its solicitors ('the solicitors').

C (3) The solicitors also wrote a letter to the petitioner and its solicitors dated 24 April 1991 demanding repayment of the loan.

(4) The petitioner had made arrangements to repay the loan and redeem the shares.

(5) The solicitors as a condition of the repayment and redemption by
D release of the shares upon repayment insisted that they be paid a sum of RM40,000 by way of their costs.

(6) A sum in excess of RM1,581.80 was paid to the bank as repayment of the loan which the petitioner believed was utilized as part payment of the solicitors' costs. The solicitors pursuant to their letters of
E 28 and 29 June 1991 demanded the balance sum of RM38,418.20 in costs to be paid in full satisfaction of their costs before the shares could be released.

(7) The petitioner had no choice but to pay the said sum of RM40,000 — in addition to the redemption sum to secure the release of the
F shares which were to be pledged with the refinanciers.

(8) The balance of the said sum of RM38,418.20 was paid to the solicitors on 1 July 1991.

(9) Pursuant to cl 23 of the loan agreement, the petitioner was bound to pay the costs of the bank's solicitors. Though the bank had filed
G proceedings for recovery against the petitioner vide Penang High Court Civil Suit No 22–140–91 ('the writ'), the bank's claim was settled and paid even before the service of the writ.

(10) The petition was filed because the petitioner was dissatisfied with the quantum of the fees demanded and received by the said solicitors, which was manifestly excessive and unconscionable; and as such, the
H petitioner being the party chargeable and liable for the payment of costs was entitled to have the said solicitors' costs taxed under the provisions of ss 126 and 130 of the Act.

(11) The petitioner had by letter dated 4 July 1991 applied to the said solicitors for the delivery of a bill of costs in respect of the said work
I aforesaid and for taxation thereof, but the said solicitors had not responded to the said letter.

At the hearing of encl 1, it was submitted by Mr RR Sethu, counsel for the petitioner that the petitioner had already agreed to repay the debt owing to

the bank and arrangements had been made with other lenders to provide the necessary finance. Before the release of securities, the respondent had said that approximately RM40,000 would be their costs, and subsequently by their letter dated 29 June 1991, they confirmed that their fees was that amount.

Consequently, this amount was paid on 1 July 1991. The petitioner maintained that they had no choice but to pay in order to secure the release of the shares, which were the securities intended to be pledged to a refinancier. The respondent's client (UMBC) had filed the writ but the matter was settled even before the service of the writ. The complaint is that the fee of RM40,000 is excessive and unconscionable as the nature of the work done todate by the respondent in filing the writ only involved a few thousand dollars at the very most.

The application was made under s 130(1) of the Act which states as follows:

> An order for the delivery of a solicitor's bill of costs, and for delivery up of any deeds, documents or other papers in the possession of the advocate and solicitor may, subject to any lien which such advocate and solicitor may have, and for the taxation of the bill when delivered, be obtained on a petition of course,

and sub-s (3) of the same section further provides that the court shall have the like jurisdiction as the High Court in England to make an order under sub-s (1).

Section 126 of the Act provides that an order for the taxation of a bill of costs delivered by any advocate and solicitor 'may be obtained by a petition as a matter of course by the party chargeable therewith, *or by any person liable to pay the cost* either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill' (emphasis added).

It is not seriously contended that no bill of costs — such as has been defined in the case of *Kintyre Park Development Pte Ltd v Cooma Lau & Loh* [1991] 1 MLJ 85 at p 87, col 2C — had been delivered by the respondent to the petitioner; only that the solicitors' two letters of demand dated 28 and 29 June 1991 had been sent. It is also noted that this petition was filed on 27 July 1991, within one month of the solicitors' demand. Hence, there is no question that this petition had been filed well within time.

The respondent raised the following objections to the petition, and for convenience I shall deal with them separately as follows:

(a) *Statutory and inherent jurisdiction sought*

The respondent had contended that the petitioner company in its petition had sought an inherent as well as the statutory jurisdiction of the court whereas the House of Lords case of *Harrison & Ors v Tew* [1990] 2 AC 523; [1990] 1 All ER 321; [1990] 2 WLR 210, had held that on its true construction of s 70(4) of the Solicitors Act 1974 (UK), which states that 'the power to order taxation conferred by subsection (2) shall not be

exercisable on an application made by a party chargeable with a bill after the expiry of 12 months from the payment of the bill', had displaced the court's inherent jurisdiction to make orders for taxation of the bill of costs where the relevant application had been made more than 12 months after payment of the bill. It ought to be noted that that the House of Lords' decision turned on the true construction of the very clear provisions in s 70(4), which was intended by the legislature to oust the courts' inherent jurisdiction. See also the decision by the Court of Appeal (the court below) in the same case, reported in [1989] QB 307; [1987] 3 All ER 865; [1988] 2 WLR 1. Be it noted that in *Harrison & Ors v Tew*, the petitioner had sought an order for taxation after the expiry of 12 months from the payment of the bill of costs by invoking the inherent powers of the court. There is no such similar express provision in s 126 of the Act to oust this court's inherent jurisdiction. In my view, by virtue of their role as watch-dog over the conduct of solicitors (being officers of the court), the courts here are not precluded under the Act from invoking its inherent jurisdiction, in appropriate cases, even in petitions made outside the stipulated period, where the facts pleaded disclose a serious misconduct of gross overcharging or fraud on services rendered by an advocate and solicitor. I cannot see the purpose of this objection. In any event, it is a point made wholly off tangent, as this petition was filed well within the time stipulated in s 126 of the Act, and despite the non-delivery of the bill of costs.

(b) *There was no affidavit filed in support of the petition*

There is no requirement either in *Atkins Court Forms* or in O 9 of the Rules of the High Court 1980 that the petition must be supported by an affidavit. This O 9 r 1 states that unless otherwise provided by special provisions relating to petitions of that particular class made by any written law, every petition under r 2 of the order must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby. And s 126 states that the application thereunder may be made '*by a petition as a matter of course*'.

We have to bear in mind that proceedings begun by way of petition are similar to proceedings by writs. And just as there are no requirements for writs of summons to be supported by affidavits (save for interlocutory applications thereunder), so also a petition — subject of course to special provisions relating to petitions of that particular class under any written law, eg divorce petitions — need not be supported by affidavits. In the current case it is also pertinent to note that the respondent has not filed any affidavits on the matter.

(c) *Sections 126 and 130 of the Act are inapplicable to enable a borrower to seek an order against the bank's solicitors for the delivery of a bill of costs and have it referred for taxation*

My attention was drawn to the vital fact that cl 23 of the loan agreement expressly imposes liability on the petitioner to pay the costs of the respondent's solicitors, being the solicitor and client costs of the lender,

for contentious as well as non-contentious work. And s 126(1), read in conjunction with 130(1) of the Act clearly provides that not only the party chargeable with the bill of costs, but also any person liable to pay the costs either to the party chargeable or to the advocate and solicitor, could avail himself of this provision to apply to the court for an order for the delivery of the solicitor's bill of costs by petition to the court. A

See para 194 of 44 *Halsbury's Laws of England* (4th Ed) and similar provisions in *Cordery's Law Relating to Solicitors* (7th Ed) at pp 238–239 para III, pp 240–241 para IV and p 387 para 71. In England, the jurisdiction of the High Court to make orders for the delivery by a solicitor of a bill of costs (and for the delivery of or otherwise in relation to any documents in his possession, custody or power) is extended to cases in which no business has been done by him in the High Court. By virtue of s 130(3) of the Act this court is clothed with the same jurisdiction as the English courts to make an order for delivery of a solicitor's bill of costs in respect of contentious as well as non-contentious matters. See p 384 para 68 of *Cordery's*. B C D

Section 131 of the Act also empowers the court to order a delivery of the bill of costs upon an application by a party other than the party chargeable. As such, upon careful consideration of the Act and the relevant case authorities, the court would have not only statutory but also inherent and general powers of supervision over the fee that solicitors charge in non-contentious matters as well as and similar to contentious matters as provided under ss 116 and 118 of the Act. Here, it would appear that the petitioner was left without any clue from the respondent as to whether the costs demanded were for wholly contentious or part contentious and part non-contentious work done. E

Furthermore, a mortgagor is, in any event, entitled to have taxation of the bill of costs of the solicitors acting for the mortgagee. See *Re Longbotham & Sons* [1904] 2 Ch 152; [1904–7] All ER Rep 488 and *Re Foster* [1920] 3 KB 306 at p 314. And indeed in some cases, delivery of a bill may be ordered solely to see whether there are grounds for taxation. The reason being that the jurisdiction to order a bill to be delivered is distinct from the jurisdiction to order the bill to be taxed, and delivery may be ordered even though afterwards taxation may not be ordered: (See per Lord Blackburn in *Duffett v McEvoy* (1885) 10 App Cas 300 at pp 302 and 303); *Re West, King & Adams, ex p Clough* [1892] 2 QB 102 at p 108 and *Re A Solicitor, Re Taxation of Costs* [1947] 1 All ER 369. It has been said that the jurisdiction of the High Court to make such an order rests in the first place on the original or inherent jurisdiction of the court over its own officers, and in the second place on the statutory provisions. See 44 *Halsbury's Laws of England* (4th Ed) para 175 at p 133 and para 178 at p 135. F G H

Although this court could, by virtue of *Duffett v McEvoy*, have granted only the first limb of prayer (a) of the petition (namely, an order only for delivery of a bill of costs) and deferred decision on the second limb of the prayer, I nevertheless found enough justification to, and granted the I

whole of prayer (a) for delivery of the bill and for taxation. The reason being that the respondent had not challenged the petitioner's assertion that the fees demanded by the respondent was manifestly and plainly excessive and unconscionable. The only rebuttal by Mr Hira Singh, the senior partner of the respondent law firm, in his submission, was that a bill had been rendered to his clients (the bank) but the petitioner — though being the party liable to pay the cost — is not entitled to a copy of the bill, allegedly rendered by his firm. His absurd stance brings to mind the case of a schoolboy who refuses to show what is in his hand but yet nevertheless maintains his innocence. And, this untenable stance taken by counsel was further compounded by his lame submission that this court ought to bear in mind that the sum owed by the petitioner to the bank was in the region of RM17m to RM18m. Surely, the very basis of a lawyer's remuneration for services rendered is his charges for actual work done, his costs can never be grounded on the factor of the high value of security held by, or amount of money owed to his clients by the party chargeable.

(d) *The costs had been paid and there was failure to make protest at the time of payment*

For the purposes of the Act, only payment of a sufficient bill of costs previously delivered could constitute payment but not when payment is made without a previously delivered bill. See para 192 at p 148 of 44 *Halsbury's Laws of England* (4th Ed). And if a sufficient bill of costs has been delivered, a party liable to pay may yet petition for an order of taxation even after the bill of costs had been paid, if special circumstances can be shown. See *Re Dawson & Bryan* (1860) 28 Beav 605, *Re Harding* (1847) 10 Beav 250; and *Re Massey* (1909) 101 LT 517. As such, the respondent also fails on this score.

(e) *The costs (though not bill of costs) was voluntarily paid, and through solicitors*

Finally, and indeed, the linchpin of the respondent's contention is that the costs was paid voluntarily and the petitioner was then represented by solicitors. In answer to this, counsel for the petitioner, Mr RR Sethu, drew the court's attention to paras 7, 9 and 10 of the petition, where the petitioner had stated that they had no choice but to pay the sum of RM40,000 on the respondent's fee in addition to the redemption sum, in order to secure the release of the shares as same had to be pledged with refinanciers. And, they had to pay this fee demanded even though the sum was manifestly excessive and unconscionable, for being apparently in respect of work done on the issue of a writ of summons against the petitioner filed under High Court Civil Suit No 22–140–91, wherein the whole of the bank's claim had been settled and fully paid even before the service of the relevant writ. The respondent had denied that there was pressure to pay. The question whether there was pressure, must be decided on the circumstances of each particular case. See *Re Boycott* (1885) 29 Ch D 571, CA. I hold that a petitioner for an order for delivery of a bill of

costs and taxation of the same would only be required in his petition to show to the court's satisfaction that he was acting under pressure when he paid the amount demanded; and the fact that he was at the material time represented by a solicitor is inconsequential.

The respondent's letter dated 28 June 1991 to the petitioner's solicitors was in the following terms:

> Your ref: RR/P2/911 Our ref: 4701/HS/ps
> (PPB/UMBC/882/91)
> Date: 28 June 1991
>
> M/s R Rajasingam & Company
> Advocates & Solicitors
> Room 7, 2nd Floor
> 28 Beach Street
> 10300 Penang By fax/post
>
> Dear Sirs
>
> Re: Penang High Court CS No 22–140–91 United Malayan Banking Corp Bhd v Perusahaan Petanda Bintang Sdn Bhd & Ors
>
> Your fax dated 28 June 1991 refers.
>
> Please note that the outstanding balance as at 26 June 1991 is RM17,232,858.70. As from 27 June 1991 till 30 June 1991 the daily interest accruing is RM5,191.90 whereafter the interest per day will differ as interest at base lending rate (BLR) + 3%pa is calculated on a monthly rest basis.
>
> The legal fees incurred to date is approximately RM40,000 and you will be notified of the exact figure on the day settlement takes place.
>
> Your proposal as faxed is not acceptable and therefore rejected.
>
> Yours faithfully
> —Sgd—
>
> cc Assistant manager
> UMBC LSD
> KL (YR: LSD/OBH/CLCY/g/91/5149

Followed closely by their second letter of 29 June 1991, the day after, which ran as follows:

> Your ref: RR/P2/91 Our ref: 4701/HS/ps
> Date: 29 June 1991
>
> M/s R Rajasingam & Company
> Advocates & Solicitors
> Room 2, 2nd Floor
> 28 Beach Street
> 10300 Penang By fax/post
>
> Dear Sirs
>
> Re: Penang High Court CS No 22–140–91 United Malayan Banking Corp Bhd v Perusahaan Petanda Bintang Sdn Bhd & Ors

A Your fax dated 28 June 1991 refers.

From your fax, it is apparent that the legal fee was not included. Your clients' third party cheques would amount to RM17,260,400.

Therefore, kindly take instructions and confirm the legal fees at RM40,000 and request your clients to add cashier's order for the sum of RM38,418.20 to satisfy the total sum of RM17,298,818.20 owing to our client, the bank, including costs to be handed on 1 July 1991 at 11am as suggested by you.

B

Please note that the Benta shares pledged to our client will only be delivered to your clients upon clearance of all the cheques tendered.

Yours faithfully
C —Sgd—

cc The assistant manager
UMBC LSD
KL (YR: LSD/OBH/CLCY/g/91/4858)

D The fact that the sum of RM40,000 was excessive had not been challenged by the respondent and the letter of 28 June 1991 also mentioned that the petitioner would have to pay daily interest calculated according to the following formula: 'As from 27 June 1994 till 30 June 1991 the daily interest accruing is RM5,191.90 whereafter the interest per day will differ as interest at base lending rate (BLR) + 3%pa is calculated on a monthly E rest basis.' Thus considering the contents of the petition and the submissions of both counsel, I am satisfied that not only the fee of RM40,000 charged by the respondent is, prima facie, grossly excessive and highly unconscionable, but it is also clear from these two letters that the petitioner was under unbearable pressure then to pay whatever sum demanded by F the respondent firm towards their purported fee, due to the escalating daily interest payable to the bank while the Benta shares were held by the latter. The respondent had also warned in his second letter that until clearance of the *cashier's order* (which was the equivalent of cash) on their 'fees incurred to date' and the *third party cheques* on the amount due to their clients, the Benta shares would not be delivered to the petitioner. G Also, the last paragraph of the letter of 28 June 1991 seemed to indicate that the petitioner had in fact proposed lower legal fees but it was 'not acceptable and therefore rejected' by the respondent.

The court should, in normal circumstances, be averse to interfere in matters concerning costs paid through his solicitor, by a party liable to pay, H but where the facts clearly disclose unconscionable conduct of a solicitor who uses his position as such to impose grossly excessive charges for his services — as here — the court would be failing in its duty if, on the mere ground that the party had paid through a solicitor, it should refuse to intervene to ensure that the rights of a consumer of legal services are I protected. Indeed, the various provisions of Pts IV and IX of the Act have been put in place by the legislature specifically for the protection of such consumer of professional services.

For all the above reasons, I allowed the petitioner's petition as prayed under encl 1 para 14(a) and (b) with costs of RM150 to the petitioner.

In postscript, I am constrained to mention with regret, the incident that occurred in the wake of this decision, when the respondent's application for leave to appeal and for stay, came up for hearing before me on 5 July 1994. Though that was a non-chamber day, I had four other chamber matters earlier scheduled for hearing. Responding to a certificate of urgency, the court immediately fixed the respondent's application as matter No 5 on the hearing list. At about 9am, immediately before the court commenced the chamber hearing, my interpreter informed me that Mr Hira Singh made a request whether his application could be heard first on the list, as he said that he would have to make the trip to Kuala Lumpur that morning to pursue his application in the (then) Supreme Court should leave and stay be turned down by me. I declined the request; heard the application as originally scheduled in the list, and dismissed his application for leave but allowed an interim stay pending his intended application to the Supreme Court. This application for leave and for stay was disposed of before lunch time, even according to the original list as matter No 5. Whatever was the motive of counsel's request, and in the manner he did, I would not presume to fathom. But the unfortunate impression thus conveyed to the court smacks of a certain flavour of an attempt to coerce the presiding judge. Be it noted that no judge worth his salt would countenance any conduct by counsel which could give rise to such unfortunate impression whether intended or unintended, by counsel.

Order accordingly.

Reported by Kevin Ooi